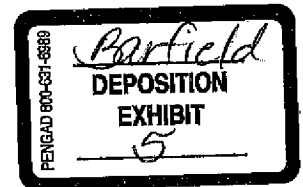


Exhibit 5

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**Senate Committee on Agriculture
Testimony on SB 272, Multi-year Flex Accounts
David Barfield, Chief Engineer
January 18, 2012**

Chairman Taddiken and members of the committee,

I am David Barfield, Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources. I appear before you today to testify in support of SB 272, amending K.S.A. 82a-736, a provision of the Kansas Water Appropriation Act which authorizes and governs multi-year flex accounts. Attached to my testimony is my report to the Legislature on the implementation of the program for the past year, as the statute requires. That report also provides some of the history of the 2011 drought, as well as KDA-DWR's response in developing this bill.

K.S.A. 82a-736 is a complex section of the Kansas Water Appropriation Act, and the proposed amendments to K.S.A. 82a-736 increase its complexity to provide more options to water right holders. However, these amendments can be easily understood as three related changes—changes that respond to the drought of 2010-2011 and what we have learned from it.

First, the bill increases the amount of groundwater that can be pumped under a flex account, without increasing overall water use. The statute allows water right holders to exchange annual pumping maximums for a five-year maximum, enabling substantial flexibility in year-to-year pumping. However, as currently enacted, the statute imposes a water penalty for that flexibility, by requiring a ten-percent reduction in that five year quantity to promote water conservation. Largely because of this penalty, very few water users have placed their water rights into flex accounts, and so the statute has conserved little water. This first change does away with the ten percent reduction for conservation. To make this intent clear, a new subsection (a) has also been added to the statute.

Second, the bill provides three different potential options for water users to compute the amount of water that they can place into a flex account. They can use the average annual historic usage of the water right, based on the years 2000 to 2009, multiplied by five. Or, they can use the normal irrigation requirement for crops in their county, multiplied by their maximum irrigated acres, again multiplied by five. Finally, where available, they can use a GMD-developed alternative, provided that it does not increase long-term water use.

Third, the statute is drafted so that it can be implemented as quickly as possible. Due to high stakeholder interest in taking advantage of this modified flex account for 2012, KDA-DWR has included more specifics in the legislation than it otherwise would—including an expansion of the definition section, and more reliance on regulations than is otherwise desirable. While these expediencies make for a longer and more complex statute, DWR and stakeholders believe that that is a price worth paying, given the benefits the amendments provide. For example, the flex account tool will be especially beneficial to water users who significantly overused their 2011

authorized quantities under drought emergency term permits, by allowing them five years to “pay back” their overuse, rather than just one.

DWR’s experience in processing the drought emergency term permits made it clear that landowners needed a clearly defined and concise water right for their flex account permit. Because water right owners may not want to place all of a water right into a flex account permit, we expect that the advantages of these accounts will produce more requests to divide water rights. To that end, Section 1 of the bill provides for such division. By dividing a water right into multiple rights, this section will allow water right holders to enroll one or more points of diversion authorized under one divided right into a multi-year flex account, while leaving the other divided right (or rights) outside the flex account. This section makes our current practice of dividing water rights explicit in statute, and provides a fee of \$300 for the division, no matter how many wells are involved.

In conclusion, I believe the proposed amendments to K.S.A. 82a-736 will provide for multi-year flexibility without increasing long term water use.

Thank you. I will stand for questions at the appropriate time.

Attachments:

Attachment 1, Report on Implementing Multi-Year Flex Accounts, January 18, 2012